

Office of the Minister for Disability Issues Cabinet Social Wellbeing Committee

Regulatory Impact Statement – Addendum

Accelerating Accessibility

Agency Disclosure Statement

This regulatory impact statement is an addendum to the Regulatory Impact Statement (RIS) **Accelerating Accessibility** released in October 2021.

This addendum should be read in conjunction with that RIS. In particular, it compares the likely outcomes, costs, benefits and risks of options to embed Te Tiriti o Waitangi into the framework to accelerate accessibility in New Zealand.

The RIS advised MSD would provide further proposals for how to give effect to Te Tiriti o Waitangi and where this should be reinforced (for example, through legislative provisions, **[content redacted]**).

This addendum examines five proposals developed following targeted engagement with groups representing Māori disability communities.

Each of these proposals and their alternate options is assessed against criteria based on Te Tiriti o Waitangi, the

Committee's advice working towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori, practicality and how the options reflect engagement feedback.

Constraints on analysis of options include:

- the need to work within decisions already made by the Minister and Cabinet about the form and features of the framework, namely that it is an enabling, high-level framework that allows for progressive removal of accessibility barriers; and that Te Tiriti o Waitangi will be embedded in the framework;
- a lack of sufficient time to fully analyse the refined proposals against a range of options, and to carry out a detailed assessment of the impact of the proposals on disabled people; and
- consultation on options being targeted due to short timeframes to ensure introduction of the legislation by July this year.

Introduction

In October 2021, Cabinet agreed [SWC-21-MIN-0145 refers] to introduce and implement a new approach to identifying, preventing, and removing barriers to participation for disabled people, Māori disabled people and their whānau (tāngata whaikaha and whānau whaikaha Māori) and others with accessibility needs. Accessibility legislation will be developed as an enabling framework for strong, clear leadership to progressively identify and address accessibility barriers.

The RIS that accompanied that paper advised that officials would provide further proposals on how to give effect to Te Tiriti o Waitangi (Te Tiriti) and where this should be reinforced (for example, through legislative provisions, **[content redacted]**).

Currently, while there is no cohesive cross-government framework to improve accessibility in New Zealand, there is also no coordinated approach to address the harm being caused by a lack of accessibility for Māori. Tāngata whaikaha and whānau whaikaha Māori experience even greater inequities than disabled non-Māori (see page 18 of RIA for issues raised in the WAI 2575 Inquiry).

Initial framing of this work was based on analysis in late 2020 of four Claims relating to ‘Māori with Disabilities,’ with a focus on the parts of each claim that directly related to accessibility that fall under Wai 2575 Health Services and Outcomes Kaupapa Inquiry¹. Through this, four themes were identified that demonstrate why we need to embed Te Tiriti in the accessibility legislation:

- *Te ao Māori*: The claims outlined that te ao Māori is not adequately acknowledged in the health and disability systems.
- **Incorporating Te Tiriti**: The claims identify issues associated with the Crown providing and designing

¹ <https://www.health.govt.nz/our-work/populations/maori-health/wai-2575-health-services-and-outcomes-kaupapa-inquiry>.

services and frameworks for Māori disabled, not complying with Te Tiriti.

- **Representation and inclusion in decision making:** The claims outline that the Crown is failing to work in good faith and partnership with Māori to ensure that Māori are adequately represented in decision making roles.
- **Consultation:** The claims identify issues with consultation processes. This includes what is being asked, how it is being asked and who is asked. The claims also outline a lack of consultation with tāngata whaikaha Māori in general.

Following a targeted consultation process with groups representing disability communities, including some tāngata whaikaha and whānau whaikaha Māori, additional proposals were developed to embed Te Tiriti in the framework – both in legislation and through operational processes. Officials then discussed these specific proposals with Kāpō Māori, Te Ao Mārama Disability Advisory Group and the Whānau Ora Interface Group as key representative groups of tāngata whaikaha and whānau whaikaha Māori.

Two key themes emerged:

- the need to ensure equitable outcomes for Māori (note this may require equitable opportunities for input by Māori); and
- the need to make space for different worldviews of disability and accessibility – namely that many Māori do not see disability on an individual level; rather, they consider accessibility barriers affect their whole whanau.

With these themes in mind, the proposed objectives of embedding Te Tiriti throughout the accessibility framework are to address inequities through:

- enabling Māori to have choice in what role they have in designing and implementing solutions to accessibility barriers;
- ensuring people working to address accessibility barriers have a good understanding of tikanga and kawa, particularly as they relate to tāngata whaikaha and whānau whaikaha Māori;
- ensuring people administering the legislation are able to adequately assess the impacts on tāngata whaikaha and whānau whaikaha Māori in a way that aligns with Te Tiriti and reflects te ao Māori; and
- supporting the Māori-Crown relationship as systemic accessibility barriers for tāngata whaikaha and whānau whaikaha Māori are progressively addressed.

Proposal

The overall approach for embedding Te Tiriti in the system is to:

- include a general treaty clause in the legislation's purpose and principles section, requiring those making decisions under the legislation to honour Te Tiriti in the process of removing barriers to participation (alongside the United Nations Convention on the Rights of People with Disabilities - UNCRPD). This will lay the foundation for

more specific guidance and policies under the legislation;
and

- reinforce this by specifying the interaction of the Committee with Te Tiriti throughout the legislation.

Officials consider the most effective ways to specify the interaction of the Committee with Te Tiriti are:

- ensuring demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori is a key consideration for Ministerial Advisory Committee (Committee) appointments as a collective, with an ongoing obligation on all members to continue to develop knowledge of Te Tiriti;
- specifying that at least a half of the Committee's membership must be Māori;
- specifying that, as part of its strategic leadership role, the Committee:
 - complete and report on an analysis of Te Tiriti and Māori interests in all more-than-minor decisions made with regard to the accessibility barriers that it seeks to address (including those that relate to Increased Participation Plans), recognising it also has a general duty to honour Te Tiriti in how it operates;
 - ensure Māori inclusion and participation in its work to address barriers in a way that is empowering for Māori;
 - report on how the accessibility framework has honoured Te Tiriti through annual reports;

- ensure its work reflects tikanga Māori and te ao Māori, the experiences of tāngata whaikaha and whānau whaikaha Māori and te ao Māori; and
- use kaupapa Māori approaches as part of its assessments of the Government's progress in implementing Increase Participation Plans in its annual report.
- While most of these elements will be legislated, some will sit outside of the legislation, **[content redacted]**

Options Analysis

Each element of the proposal is assessed against the following criteria, to the extent to which the proposal:

- gives effect to the Crown's Tiriti responsibilities by filling current gaps in our legislation and practice;
- will contribute to the Committee providing advice towards achieving equitable outcomes for tāngata whaikaha and whānau whaikaha Māori;
- is practicable to implement; and
- reflects community representatives' feedback.

Options analysis is provided below.

[The original format of the options analysis was in a table and has been summarised to support accessible format translations]

Element 1: Embedding Te Tiriti through a purpose and principle statement

Options: Officials identified three options for how Te Tiriti could be embedded into the legislation:

- include a general Treaty clause in the legislation, stating that one of the purposes and principles of the Act is to honour Te Tiriti, which would require those making decisions under the Act to act in accordance with Te Tiriti; and specify the interaction of the Committee with Te Tiriti throughout the legislation (proposed)
- No general treaty clause, but references to Te Tiriti throughout, specifying how Te Tiriti will be honoured through aspects of the Act
- Status Quo: no mention of Te Tiriti

Conclusion: As advocated by community representatives, officials propose that Te Tiriti be embedded in the framework in multiple ways. In the legislation, we propose that a core principle of the accessibility framework in achieving its purpose be to honour and realise the rights of disabled people, tāngata whaikaha and whānau whaikaha Māori, and others with accessibility needs as detailed in Te Tiriti, alongside the UNCRPD and other domestic and international instruments as relevant.

This approach can be strengthened and made practicable by specifying requirements on the Committee to uphold Te Tiriti, as detailed in further sections.

Element 2: Ensuring knowledge of Te Tiriti, te ao Māori and tikanga Māori in leadership

Options: Officials identified three options for ensuring knowledge of Te Tiriti, te ao Māori and tikanga Māori on the Ministerial Advisory Committee (the Committee):

- Ensuring there is one-two people on the Committee with demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori;
- Ensuring demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori is a key *consideration* for Committee appointments *as a collective, with an ongoing obligation on all members to continue to develop knowledge of Te Tiriti* (proposed);
- Status quo: no requirement.

Conclusion: Ensuring knowledge of Te Tiriti, te ao Māori and tikanga Māori in leadership is key to making sure people administering the legislation are able to adequately assess impacts on Māori in a way that aligns with Te Tiriti. We propose that demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori is a key consideration for Committee appointments as a collective, to reinforce that upholding Te Tiriti is the responsibility of the whole board, not the burden of a few. Annual training will help ensure members improve their knowledge of Te Tiriti both individually and as a collective and over time.

Element 3: Ensuring Māori membership on the Committee

Options: Officials identified four options for how to ensure Māori membership on the Committee:

- Specifying in the Act that at least one of the Committee's membership must be Māori;
- Specifying in the Act that at least a third of the Committee's membership must be Māori;
- Specifying in the Act that at least a half of the Committee's membership must be Māori (proposed);
- Status quo: no minimum number of the Committee's membership must be Māori.

Conclusion: To honour Te Tiriti, a strong partnership approach can be expressed through equal membership on the Committee.

Further reasons for equal membership of governance arrangements (across government) include:

- to acknowledge that past and existing governance and management structures have historically failed to serve Māori and have not resulted in equitable outcomes, particularly for tāngata whaikaha Māori;
- to re-establish, maintain and/or strengthen the relationship between Māori, hapū and iwi and the Crown;
- to protect Māori voices from being “balanced out” in decision-making.

We have not specified that Māori members have to be tāngata whaikaha. Community representatives spoke of the need to take a collective view, including involving whānau whaikaha in all decisions that affect tāngata whaikaha. Representatives also acknowledged that the Committee requires a range of expertise that may sit outside those groups.

Element 4: Nominations process for Māori members of the Committee

Options: Officials identified two options for how Māori members of the Committee should be nominated:

- Māori members nominated by the general nominating panel;
- An empowering, self-determinative and parallel nominations process be used for appointing Māori members, using existing mechanisms valued and determined by tāngata whaikaha Māori. For example, working with the National Iwi Chairs Forum to determine the most suitable process.

Conclusion: One of the strongest messages we heard through engagement was that Māori should determine the process for Māori Committee nominations, and that Māori should nominate Māori Committee members. While the Minister will have final say as to the selection of the Committee, nominations process for appointing Māori members, using existing mechanisms chosen by Māori, will ensure Māori maintain a degree of control, authority and

rangatiratanga over membership on the Committee and how Māori will be represented on it.

Element 5: Requirements on the Committee's analysis and reporting

Options: Officials identified two options for requirements on the Committee's analysis and reporting:

- Specifying that, as part of its strategic leadership role, the Committee:
 - complete and report on an analysis of Te Tiriti and Māori interests in all more-than-minor decisions made with regard to the accessibility barriers that it seeks to address (including those that relate to Increased Participation Plans), recognising it also has a general duty to honour Te Tiriti in how it operates;
 - ensure Māori inclusion and participation in its work to address barriers in a way that is empowering for Māori;
 - report on how it has honoured Te Tiriti through annual reports;
 - ensure its work reflects tikanga Māori and te ao Māori, the experiences of Tāngata whaikaha and whānau whaikaha Māori and te ao Māori;
 - use kaupapa Māori approaches as part of its assessments of the Government's progress in implementing Increase Participation Plans in its annual report.
 - Status quo: no requirements.

Conclusion: The proposed requirements on the Committee will help ensure:

- Te Tiriti obligations will be realised and reported on at a decision-making level
- there are participation mechanisms that allow Māori to have choice in what role they have in designing and implementing solutions to accessibility barriers
- the framework supports the Māori-Crown relationship as systemic accessibility barriers are progressively identified, prevented, and removed.
- Note – as well as these reporting and assessing requirements, each of the legislative elements in this addendum will be reviewed as part of the proposed five-yearly periodic review of the accessibility legislation.

**End of Regulatory Impact Statement – Addendum
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May 2022